

ASSEMBLY BILL

No. 2317

Introduced by Assembly Member Saldana

February 19, 2010

An act to amend Sections 38773.1 and 38773.5 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2317, as introduced, Saldana. Local government: nuisance abatement.

Existing law authorizes a local legislative body to establish a procedure to use a nuisance abatement lien or a special assessment to collect abatement and related administrative costs.

This bill would authorize a local government body to also collect fines using a nuisance abatement lien or a special assessment.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 38773.1 of the Government Code is
- 2 amended to read:
- 3 38773.1. (a) The legislative body may by ordinance establish
- 4 a procedure to collect abatement and related administrative costs
- 5 *and fines* by a nuisance abatement lien. This ordinance shall require
- 6 notice prior to the recordation of the lien to the owner of record
- 7 of the parcel of land ~~or~~ on which the nuisance is maintained, based
- 8 on the last equalized assessment roll or the supplemental roll,
- 9 whichever is more current.

(b) The notice shall be served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Section 6062.

(c) A nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

(1) A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(2) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in paragraph (1) shall be recorded by the governmental agency. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(3) A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment.

(4) Notwithstanding Section 6103, Section 27383, or any other provision of law, the county recorder may impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the property owner. A city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

SEC. 2. Section 38773.5 of the Government Code is amended to read:

38773.5. (a) As an alternative to the procedure authorized by Section 38773.1, the legislative body may, by ordinance, establish a procedure for the abatement of a nuisance and make the cost of abatement of a nuisance upon a parcel of land, *including fines*, a

1 special assessment against that parcel *of land on which the nuisance*
2 *is maintained.*

3 (b) A city may, by ordinance, provide for the recovery of
4 attorneys' fees in any action, administrative proceeding, or special
5 proceeding to abate a nuisance. If the ordinance provides for the
6 recovery of attorneys' fees, it shall provide for recovery of
7 attorneys' fees by the prevailing party, rather than limiting recovery
8 of attorneys' fees to the city if it prevails. The ordinance may limit
9 recovery of attorneys' fees by the prevailing party to those
10 individual actions or proceedings in which the city elects, at the
11 initiation of that individual action or proceeding, to seek recovery
12 of its own attorneys' fees. In no action, administrative proceeding,
13 or special proceeding shall an award of attorneys' fees to a
14 prevailing party exceed the amount of reasonable attorneys' fees
15 incurred by the city in the action or proceeding.

16 (c) Any procedure established pursuant to this section shall
17 include notice, by certified mail, to the property owner, if the
18 property owner's identity can be determined from the county
19 assessor's or county recorder's records. The notice shall be given
20 at the time of imposing the assessment and shall specify that the
21 property may be sold after three years by the tax collector for
22 unpaid delinquent assessments. The tax collector's power of sale
23 shall not be affected by the failure of the property owner to receive
24 notice. The assessment may be collected at the same time and in
25 the same manner as ordinary municipal taxes are collected, and
26 shall be subject to the same penalties and the same procedure and
27 sale in case of delinquency as provided for ordinary municipal
28 taxes. All laws applicable to the levy, collection and enforcement
29 of municipal taxes shall be applicable to the special assessment.
30 However, if any real property to which the cost of abatement relates
31 has been transferred or conveyed to a bona fide purchaser for value,
32 or if a lien of a bona fide encumbrancer for value has been created
33 and attaches thereon, prior to the date on which the first installment
34 of the taxes would become delinquent, then the cost of abatement
35 shall not result in a lien against the real property but instead shall
36 be transferred to the unsecured roll for collection.

37 (d) A local agency that has imposed an assessment pursuant to
38 this section may, subject to the requirements applicable to the sale
39 of property pursuant to Section 3691 of the Revenue and Taxation

- 1 Code, conduct a sale of vacant residential developed property for
- 2 which the payment of that assessment is delinquent.
- 3 (e) Notices or instruments relating to the abatement proceeding
- 4 or special assessment shall be entitled to recordation.

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